

REMARKS

This communication responds to the Office Action dated April 29, 2009.

No claims are amended, canceled, or added by this Response. Claims 1, 7, 9, 11-12, 14 and 16 remain pending in this application.

§ 103 Rejection of the Claims

1. Claims 1, 7, 9, 11-12, 14 and 16 were rejected under 35 U.S.C. § 103(a) as being obvious over NOWTHIS.COM (NOWTHIS.COM, blog entry, November 24, 1999, hereinafter, “NowThis”) in view of Nielsen (U.S. Patent No. 6,789,075). Applicant respectfully traverses the rejection.

Applicant respectfully submits that a proper *prima facie* showing of obviousness has not been established for these claims because NowThis, Nielsen, and/or the Office Action’s reasoning do not provide all of the subject matter of base claims 1, 9, and 14.

For example, Applicant cannot find in NowThis, Nielsen, or the reasoning of the Office Action, among other things,

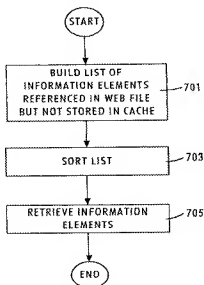
sorting the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order; and recurrently tallying the number of indications and re-sorting the reviews for a subsequent display,

as similarly recited in independent claims 1, 9, and 14 and incorporated into claims 7, 11, 12, and 16.

The Office concedes that NowThis does not specifically disclose *sorting the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order and resorting the reviews for a subsequent display*, but states that Nielsen discloses ranking web information elements according to an attribute in each element and displaying the elements in a sorted order.

Applicant respectfully disagrees with this characterization of Nielsen. The cited portions of Nielsen relate to a method that retrieves a web file and sorts one or more web object references according to a Priority attribute associated with each web object reference (*see* Nielsen, col. 1 lines 53-58). After ranking the web object references by priority, the method then

retrieves each web object in the order that their reference were ranked. Thus, Nielsen sorts the web objects according to how they should be retrieved, which is different from *sorting as a function of the number of indications ... for display*. The sorting in Nielsen is shown in FIG. 7 of Nielsen, which is reproduced below.



Because NowThis does not provide any sorting and Nielsen sorts according to a priority of retrieval and not display, NowThis and Nielsen, either separately or in the proposed combination, does not provide *sorting the reviews ... as a function of the number of indications tallied for each review ... and "re-sorting the reviews for a subsequent display,"* as similarly recited in the claims.

Additionally, the Priority attribute in Nielsen is static and is set by the author of the web file (see col. 6 lines 23-27). Thus, the Priority attribute is not useful for recurrently tallying the number of indications and re-sorting the reviews for a subsequent display. Therefore, one of ordinary skill in the art would not reasonably be led, upon reading NowThis and Nielsen, to use the sorting by Priority attribute in Nielsen to modify NowThis to obtain what is claimed in the present Application.

Further, Applicant is unable to find *"sending an error to the user" if the interactive element is clicked more than once by the user for the review*. The Office Action concedes that this element is not found in the cited references (see Office Action, pg. 5), but only asserts that

without this, a user would click on the link, and be unsure as to whether a vote was cast or not. It is unclear whether the assertion is that the missing element is inherent or if the Office Action is taking Official Notice of the missing element.

If the assertion is that the missing element is inherent Applicant respectfully disagrees. The Office Action has not established a *prima facie* case of inherency because, as recited in MPEP § 2112, “In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.”¹ Applicant respectfully submits that the missing element does not necessarily flow from the references because other methods could provide the user with confirmation whether a vote was cast or not. In one example, an increment in the count would indicate that the vote was cast. In another example, the appearance of the interactive element could be altered (e.g., ghosted) to indicate that the vote was cast. Therefore, *sending an error to the user if the interactive element is clicked more than once by the user for the review* is not inherent in the cited references.

If the Office Action is taking Official Notice of the missing element, Applicant respectfully objects to the assertion of Official Notice and requests that references are cited in support of the assertion.

Therefore, NowThis, Nielsen, and/or the Office Action’s reasoning do not provide all of the subject matter of claims 1, 9, and 14. Accordingly, withdrawal of the rejection and allowance of claims 1, 7, 9, 11-12, 14 and 16 is respectfully requested.

2. Claims 1, 7, 9, 11-12, 14 and 16 were rejected under 35 U.S.C. § 103(a) as being obvious over WWW.EPINIONS.COM (WWW.EPINIONS.COM, October 12, 1999, hereinafter; “Epinions”) in view of Salas et al. (U.S. Patent No. 6,230,185, hereinafter; “Salas”), and further in view of Nielsen. Applicant respectfully traverses the rejection.

Applicant respectfully submits that a proper *prima facie* showing of obviousness has not been established for these claims because Epinions, Salas, Nielsen, and/or the Office Action’s reasoning do not provide all of the subject matter of claims 1, 9, and 14. For example, Applicant

¹ MPEP §2112, citing Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original).

cannot find in Epinions, Salas, Nielsen, or the reasoning of the Office Action, among other things,

sorting the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order; and recurrently tallying the number of indications and re-sorting the reviews for a subsequent display,

as similarly recited in independent claims 1, 9, and 14 and incorporated into claims 7, 11, 12, and 16.

The Office Action concedes that Epinions does not specifically disclose *sorting the reviews in ascending or descending order as a function of the number of indications tallied for each review, and sequentially displaying the reviews in the sorted order and resorting the reviews for a subsequent display*, and only uses Salas regarding allowing only one vote per user. But the Office Action states that Nielsen discloses ranking web information elements according to an attribute in each element and displaying the elements in a sorted order.

However, as set forth above, Nielsen sorts the web objects according to how they should be retrieved, which is different from sorting them to how they should be displayed. Thus, Epinions, Salas and Nielsen, either separately or in the proposed combination does not provide *sorting the reviews ... as a function of the number of indications tallied for each review ... and "re-sorting the reviews for a subsequent display,"* as similarly recited in the claims.

Additionally, the Priority attribute in Nielsen is static and is set by the author of the web file (see col. 6 lines 23-27). Thus, the Priority attribute is not useful for recurrently tallying the number of indications and re-sorting the reviews for a subsequent display. Therefore, one of ordinary skill in the art would not reasonably be led, upon reading Epinions, Salas and Nielsen, to use the sorting by Priority attribute in Nielsen to modify Epinions and Salas to obtain what is claimed in the present Application.

Further, Applicant is unable to find *"sending an error to the user" if the interactive element is clicked more than once by the user for the review*. The Office Action concedes that this element is not found in the cited references (see Office Action, pg. 5), but only asserts that without this, a user would click on the link, and be unsure as to whether a vote was cast or not. It is unclear whether the assertion is that the missing element is inherent or if the Office Action is taking Official Notice of the missing element. If the assertion is that the missing element is

inherent, at least for the reasons set forth above, Applicant respectfully submits that sending an error to the user if the interactive element is clicked more than once by the user for the review is not inherent in the cited references. If the Office Action is taking Official Notice of the missing element, Applicant respectfully objects to the assertion of Official Notice and requests that references are cited in support of the assertion.

Further still, Applicant is unable to find *displaying the count of the stored number of indications for the review on the client display "together with the review,"* as similarly recited in the claims. The Office Action asserts that this is found in Epinions on page 9. However, this page shows the profile for a reviewer and a number of members that trust the reviewer. Displaying the number of members that trust the reviewer is different from *displaying the count of stored number of indications for the review*. Additionally, Epinions on page 10 shows that the review is not displayed with the count. Thus, Epinions, Salas and Nielsen do not establish *displaying the count of the stored number of indications for the review on the client display together with the review*.

Therefore, Epinions, Salas, Nielsen, and/or the Office Action's reasoning do not provide all of the subject matter of claims 1, 9, and 14. Accordingly, withdrawal of the rejection and allowance of claims 1, 7, 9, 11-12, 14 and 16 is respectfully requested.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 371-2172 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402--0938
(612) 371-2172

Date 29 July 2009

By Paul J. Urbanski
Paul J. Urbanski
Reg. No. 58,351

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 29th day of July, 2009.

Chris Bartl
Name

C. Bartl
Signature